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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,381	12/30/2003	Matthew T. Fitton	20,091	8953
23556	7590	01/24/2007	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	01/24/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/24/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/750,381	FITTON, MATTHEW T.
	<b>Examiner</b> Melanie J. Hand	<b>Art Unit</b> 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 November 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-42 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4,, 13-18,31,32,36,42 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>12/13/06</u>	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Response to Arguments***

Applicant's arguments, see Remarks, filed November 9, 2006, with respect to the rejection(s) of claim(s) 31 and 42 under 35 U.S.C. 102 and claims 1, 2, 4, 13-18, 32, 36 and 37 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of applicant's statement of common ownership between the instant application and the prior art of Mortell et al at the time the invention was made and newly found prior art references.

***Information Disclosure Statements***

The information disclosure statements (IDS) submitted on July 11, 2006 were filed after the mailing date of the Application on December 30, 2003. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the

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international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 13, 14, 16, 17, 31, 32, 36 and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Coates (U.S. Patent Application Publication No. 2003/0216705).

With respect to **claim 1:** Coates teaches an absorbent garment 10 comprising a garment shell 15 and an inner absorbent assembly, wherein the garment shell 15 comprises a front panel assembly defining a front waist region, and a back panel assembly defining a back waist region (Fig. 10E), the front panel assembly being connected to the back panel assembly so as to define a waist opening and at least one leg opening (Fig. 10E), the garment shell 15 further comprising an elasticized shell waistband 11, the elasticized shell waistband 11 adapted to encircle the wearer, the garment shell 15 defining a body-side surface and an outward surface; wherein the inner absorbent assembly comprises: an absorbent pad, the absorbent pad defining a front region and a back region; an elasticized support waistband 44 defining a front waist section and a back waist section, the front waist section being connected to the absorbent pad front region (Fig. 10); and at least one posterior support strap 121 connecting the elasticized support waistband 44 to the absorbent pad; wherein the elasticized support waistband is connected to the body-side surface of the garment shell. (Fig. 10, ¶¶0050,0086,0087,0089)

With respect to **claim 2:** The elasticized shell waistband 11 defines a shell waistband edge, and the elasticized support waistband 44 defines a support waistband edge, and the shell waistband edge and the support waistband edge are coterminous. (Fig. 10)

With respect to **claim 4:** The at least one posterior support strap 121 is narrower in width than the absorbent pad 50. (Fig. 3D, ¶0065)

With respect to **claim 13:** Absorbent garment 10 further comprises at least one anterior support strap 121 connecting the elasticized support waistband to the absorbent pad 50. (Fig. 3D, ¶0065)

With respect to **claim 14:** The anterior support strap 121 is connected to the front region of the absorbent pad 50. (Fig. 3D, ¶0065)

With respect to **claim 16:** The garment 10 also includes a crotch region interconnecting the front and back panels to define two leg openings. (Fig. 10)

With respect to **claim 17:** The absorbent pad 50 back region defines a back end and the absorbent pad front region defines a front end, and wherein the absorbent pad further defines two side edges, each side edge extending between the front and back end, and wherein the two side edges, the front end, and the back end are urged upward generally toward the wearer to define an upwardly urged periphery of the absorbent pad. (Figs. 3D, 10)

With respect to **claim 31:** Coates teaches an absorbent garment 10 comprising a garment shell 15 and an inner absorbent assembly, wherein the garment shell 15 comprises a front panel assembly defining a front waist region, a back panel assembly defining a back waist region, and a crotch region extending longitudinally between and interconnecting the front waist region, and the back waist region the front panel assembly being connected to the back panel assembly so as to define a waist opening and at least one leg opening, the garment shell 15 further comprising an elasticized shell waistband 11, the elasticized shell waistband adapted to encircle

the wearer, the garment shell 15 defining a body-side surface and an outward surface; wherein the inner absorbent assembly comprises: an absorbent pad 50, the absorbent pad 50 defining a front region and a back region, the front region being connected to the front waist region of the garment shell 15, and the back region terminating in the crotch region of the garment shell 15 (Fig. 10); and at least one posterior support strap 121 which connects the absorbent pad to the back waist region of the garment shell 15. Coates implicitly describes an embodiment wherein at least one posterior support strap 121 connects the absorbent pad to the back waist region of the garment shell 15 while remaining free of attachment to the crotch region of the garment shell 15, such configuration resulting from the front two straps 121 in Fig. 3D not being utilized. (Figs. 3D, 10; ¶¶0050, 0065, 0086, 0087, 0089)

With respect to **claim 32**: The at least one posterior support strap 121 is narrower in width than the absorbent pad 50. (Fig. 3D, ¶0065)

With respect to **claim 36**: Absorbent garment 10 further comprises at least one anterior support strap 121 connecting the elasticized support waistband to the absorbent pad 50. (Fig. 3D, ¶0065)

With respect to **claim 42**: The garment 10 also includes a crotch region interconnecting the front and back panels to define two leg openings. (Fig. 10)

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coates ('603).

With respect to **claim 18**: Coates does not explicitly teach that the pad 50 has a periphery which contains at least 20% of the capacity of said pad 50. The upwardly urged periphery of the absorbent pad 50 comprises absorbent material that provides at least about 20% of an absorbent capacity of the absorbent pad. However applicant has not established sufficient criticality for such a capacity percentage being present in the upwardly urged periphery. Since the amount of absorbent material present in the periphery will dictate the amount of fluid absorbed and thus stopped from leaking outwardly from the garment, such capacity percentage is considered herein to be a result effective variable, and thus it would be obvious to one of ordinary skill in the art to upwardly urge the side, front and back edges of the pad taught by Coates so as to achieve a configuration in which an upwardly urged periphery is formed that provides at least 20% of the capacity of said pad. It has been held that where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. See *In re Aller, Lacey and Hall* (105 USPQ 233, CCPA, 1955).

Claims 15 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coates ('603) in view of Yamamoto et al (U.S. Patent No. 5,700,256).

With respect to **claims 15,37**: Coates does not teach explicitly that the at least one posterior strap is elastomeric. Yamamoto teaches an absorbent pad suspended from an elastic waistband by pairs of anterior and posterior elastomeric suspending straps adapted for use with an outer cover such as a garment shell. Yamamoto teaches that the straps allow for adjustment by the wearer to both bring the pad into proper fitting contact with the user's pubic area and the maintenance of the pad in this desired position to prevent leakage therefore it would be obvious

to one of ordinary skill in the art to modify the straps taught by Coates so as to be comprised of elastomeric material as taught by Yamamoto to provide accessibility the user in terms of adjustment for proper fit and to prevent leakage. ('256, Fig. 1, Col. 2, lines 13-18, 25-27, 35-50)

***Conclusion***

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on December 13, 2006 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

January 11, 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

